

Pre-Appeal Brief Request for Review
Serial No.: 09/888,943
Confirmation No.: 9282
Filed: 25 June 2001
For: RESPIRATOR VALVE

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Claims 28-32, 34-42, 44-55, 57-65, and 67-71 have been rejected under 35 U.S.C. § 102(b) as being anticipated by Lübeck (DE 1213249).

Claims 16, 33, 43, 56, and 66 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Lübeck in view of Japuntich et al. (U.S. Pat. No. 5,509,436).

(Please note that Applicants are unclear as to why claim 16 is being rejected because claim 16 was canceled in the Amendment and Response dated 31 Oct. 2007. Further, please note that Applicants are unclear as to the status of claim 27 as it does not appear to have been addressed in the Detailed Action of the Office Action.)

The Examiner has clearly erred in rejecting independent claims 28, 38, 51, and 61 (from which the rest of the claims depend) under 35 U.S.C. § 102(b) as being anticipated by Lübeck because Lübeck does not teach or suggest all the claim elements recited in the rejected claims.

For example, Lübeck does not teach a valve flap having a curvature from a first end to a second end when not attached to the valve body or the face mask as recited in independent claims 28, 38, 51, and 61. Lübeck, instead, teaches valve flaps that only have a flat shape. See *Lübeck*, Figures 1, 5-7.

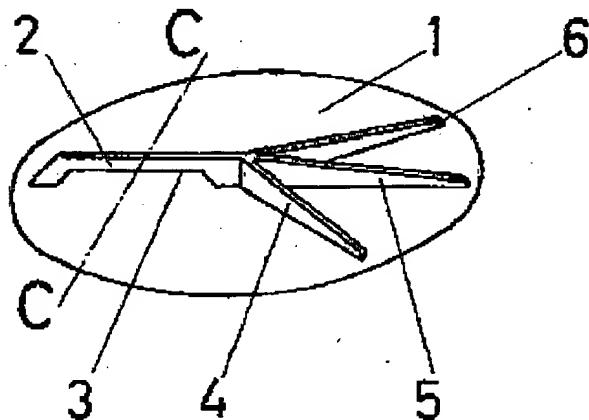
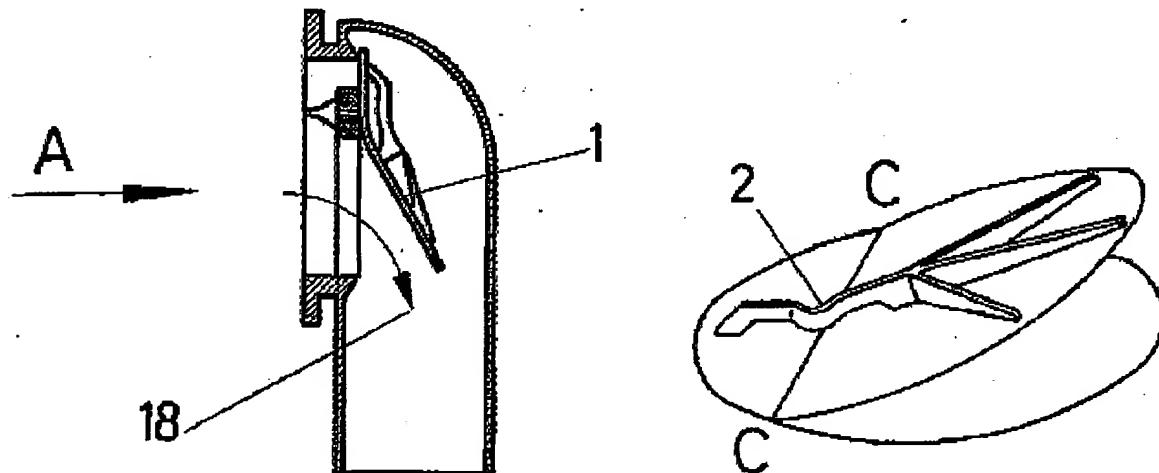


Figure 5 of Lübeck.

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In response to these arguments, it is asserted in the Office Action that Figures 3 and 6 of Lübeck, in particular, show the claimed curvature in the valve flap. *See Office Action*, 29 Nov. 2007, page 2 ("The examiner disagrees. Lübeck does disclose a valve flap having a curvature from the first end to the second end when the valve flap is not attached to the valve body as stated in claim 28 or when the valve flap is not attached to the face mask as stated in claim 38 (see figures 3 and 6).").



Figures 3 & 6, respectively, of Lübeck.

Although the valve flaps in Figures 3 and 6 of Lübeck are curved in Figures 3 & 6, the valve flaps are being forced open by airflow in both figures. As a result, any characterization of Figures 3 and 6 of Lübeck as depicting a valve flap that has curvature when it is not attached to another structure is factually wrong.

As support for Applicants' position that Figures 3 and 6 of Lübeck show valve flaps being forced open by airflow, please note the following sentence found in the third paragraph after the figure descriptions on page 3 of the Lübeck Translation: "As shown in Fig. 3 and 6, the bridge 3 of rib 2 bends sideways for an opened valve." In other words, the valve flaps that are depicted in Figures 3 and 6 of Lübeck have been deflected into the curved shape by air pressure to open the valve in which they are located when, e.g., a user exhales.

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Applicants' position that the valve flaps of Figures 3 and 6 of Lübeck are being deflected is further reinforced by Figure 5 of Lübeck (shown above), which shows a flat valve flap. The flat valve flap shown in Figure 5 is same valve flap as shown in Figure 6 except that in Figure 6, the valve flap is open, and therefore deflected, as evidenced by the following sentence found on the third line on page 3 of the Lübeck Translation: "Fig. 6 the closure body of Fig. 5 in open state."

As a result, it is factually incorrect to assert that Lübeck teaches a valve flap having a curvature from a first end to a second end when not attached to the valve body or the face mask as would be required for *prima facie* anticipation rejection of independent claims 28, 38, 51, and 61.

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Summary

For at least the above reasons, Applicants assert that the reasons provided demonstrate clear errors in the Examiner's rejection, and/or the Examiner's omission of one or more essential elements needed for a *prima facie* anticipation rejection. Accordingly, Applicants respectfully request reconsideration and withdrawal of the anticipation rejection of claims 27-47 and 49-71 in the above-identified application.

Respectfully submitted
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28 MAR. 2008
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CERTIFICATE UNDER 37 CFR §1.8:

The undersigned hereby certifies that the Transmittal Letter and the paper(s), as described hereinabove, are being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Mail Stop Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 28th day of March, 2008, at 11:34 am (Central Time).

By: Dani Monroe
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